



Republic v Oundo (Criminal Case E028 of 2025) [2025] KEMC 174 (KLR) (8 July 2025) (Ruling)

Neutral citation: [2025] KEMC 174 (KLR)

**REPUBLIC OF KENYA
IN THE MAKADARA LAW COURTS
CRIMINAL CASE E028 OF 2025**

J WAKIAGA, J

JULY 8, 2025

BETWEEN

REPUBLIC PROSECUTOR

AND

OSCAR WANDERA OUNDO ACCUSED

RULING

1. The accused pleaded not guilty to the offence of murder contrary to section 203 as read with section 204 of the Penal Code.
2. In compliance with the provision of Article 49(1) (h) of the Constitution, the prosecution filed an affidavit sworn by SSgts. B Billo and Getui Alex Matoke a brother of the deceased in which it was deposed that the accused and the deceased where cohabiting together as husband and wife since 2021 and were survived with two issues aged 16 and 2 years respectively of who he was the current guardian.
3. It was contended that if the accused was granted bond , his presence was likely to stifle counselling sessions that the children were undergoing as part of their healing process following the incidence.
4. It was deposed that the accused was in possession of a passport and had planned to travel outside the country to Qatar immediately prior to the alleged commission of the offence and was therefore a flight risk who was likely to abscond in the event he is granted bond.
5. In response the accused filed a replying affidavit in which he stated that he was a committed Christian, a member and former choir instructor of the Seventh Day Adventist Church [Particulars Withheld] where he regularly attends and was a loving and responsible father , with an ongoing duty and desire to maintain contact with and support his biological son, which he undertook to do under the supervision of either his uncle or a children officer as may be directed by the court.
6. He deposed that he was a holder of a passport but had never applied for a VISA to exit the country and had no intention whatsoever of interfering with the prosecution witnesses.



7. He was supported by one Ronny Newman Ouna , who deposed that he was aware of the charges the accused was facing and that he was willing to host the accused at his residence located at [Particulars Withheld] Apartment – Ngando road and under took to support him fully as he continued with his legitimate business and to ensure that he attends court if and when required without fail.
8. Mr. George Agutu the current Choir director of the church sworn an affidavit in support of the accused in which it was deposed that he was not a threat to the community and continued to enjoy a good reputation among the church members
9. In compliance with the Bond Bail Policy Guidelines, the court called for Pre-bail report dated 27th may 2025 in which it was stated that the accused had a close tie with all his family members who were very supportive and willing to post bond for him. It was stated that the accused was married to the deceased with who they had two children and that he did not indulge in drugs or alcohol.
10. On the victim , it was stated that she was the first born in as family of three siblings and was working as a security personnel with G4S. The family stated that they were unaware of the accused true identity despite living with the deceased, who had complained of several domestic violence and irresponsibility of the accused in financial matters and manipulative nature of the accused.
11. On the community ties, the chief of Kayole Masimba and the village elder stated that they did not know the accused due to the transient nature of the informal area but the chief of his rural home described him as a person of good morals and had no objection to his being released on bond.

Submissions

12. Ms Ogweni for the State submitted that there was the issue of the two children of the accused and the deceased whose protection and custody is before the lower court and since the accused now is the sole parent after the death of their mother, the children need to be protected as witnesses and for their own safety. It was contended that whereas the accused had offered an alternative accommodation, the safety and accommodation of the children had not been taken into account.
13. It was submitted that the application for bail should be placed in the abeyance until the issues of the safety and security of the minors have been taken care noting that there was evidence that the minor had witnessed the fight between the accused and the deceased and that the relationship between them was not good as he had wanted her to go and live up country, something the deceased did not want, as per the children officers report produced in the lower court, which recommended temporary custody.
14. The accused filed written submissions which were highlighted by Mr. Achoki. It was submitted that the burden was upon the prosecution to prove the existence of compelling reasons as was stated in *Republic v Danson Mgunya & another* [2010] eKLR and that to succeed on the ground of interference with witnesses the prosecution must place material before the court which demonstrated actual or perceived interference as was stated in *Republic v Dwight sagaray & others* [2013] eKLR and that the accused had secured an alternative place of abode away from the scene.
15. On the allegation that the accused was flight risk, it was submitted that the same had not secured a VISA and that the primary consideration for bond was whether the accused will show up for his trial as was stated in *Republic v Joseph Thiongo Waweru and 17 others* [2017] eKLR and that all the allegations by the prosecution including the court attendance can be secured by bond terms which should be such as not to amount to denial of the constitutional right to bail.



Detremination

16. The right of an accused person to be released on bond or bail is provided for under Article 49 (1) (h) of the *Constitution* which states that The Court of Appeal in *Michael Juma Oyamo v Republic* [2019] e KLR stated the legal position on the right to bail in the following terms : “23. We have carefully considered the record of appeal, the submissions by counsel and the various authorities cited. Article 49(1) (h) of the *Constitution* states that an arrested person has the right “to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons”. It is therefore clear that such constitutional right can only be limited if the prosecution satisfies the court that there are compelling grounds to warrant its denial to an accused person. We wish to adopt the definition of what amounts to compelling reasons as defined by the High Court in *R v Joktan Malende and 3 Others* Criminal Case No. 55 of 2009 as follows:

“..... The phrase compelling reasons would denote reasons that are forceful and convincing as to make the court feel very strongly that the accused should not be released on bond. Bail should not therefore be denied on flimsy grounds but on real and cogent grounds that meet the high standards set by the *Constitution*.”

24. According to the recently launched publication, *Crimianl Procedure Bench Book* at pages 48 – 51 paragraph 105, compelling reasons may include the likelihood that the accused will fail to attend court; commit or abet the commission of, a serious offence; endanger the safety of victims, individuals or the public; interfere with witnesses or evidence; endanger national security or public safety; and where it is necessary for the protection of the accused.

25. Further, section 123 A(1) of the *Criminal Procedure Code* which is to be read with section 123 thereof provides as follows:

“123A(1) Subject to Article 49(1)(h) of the *Constitution* and notwithstanding section 123, in making a decision on bail and bond, the court shall have regard to all the relevant circumstances and in particular -

- (a) the nature and seriousness of the offence ;
- (b) the character, antecedents, associations and community ties of the accused person;
- (c) the defendant’s record in respect of the fulfillment of obligations under previous grants of bail; and;
- (d) the strength of the evidence of having committed the offence.”

Subsection (2) thereof stipulates that a person who is arrested or charged with any offence shall be granted bail unless the court is satisfied that the person –

- “(a) has previously been granted bail and has failed to surrender to custody and that if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody;
- (b) should be kept in custody for his own protection.”



26. This Court has had occasion to pronounce itself on all these constitutional and statutory principles regarding bail in *Republic v Nuseiba Mohammed Haji Osman* [2018] eKLR where the Court stated, inter alia:

“Denial of a constitutional right is not a matter to be treated lightly and therefore any claims made against an accused person aimed at curtailing the constitutional right to liberty must not be made on speculation or conjecture.”

17. The *Judiciary Bail and Bond Policy Guidelines* provide as follows: The considerations in determining whether or not to grant bail are set out in *Kenya Judiciary’s Bail and Bond Policy Guidelines*, March 2015 at p. 25 which sets out judicial policy on bail as follows:

The following procedures should apply to the bail hearing:

- (a) The Prosecution shall satisfy the Court, on a balance of probabilities, of the existence of compelling reasons that justify the denial of bail. The Prosecution must, therefore, state the reasons that in its view should persuade the court to deny the accused person bail, including the following:
 - a. That the accused person is likely to fail to attend court proceedings; or
 - b. That the accused person is likely to commit, or abet the commission of, a serious offence; or
 - c. That the exception to the right to bail stipulated under Section 123A of the *Criminal Procedure Code* is applicable in the circumstances; or
 - d. That the accused person is likely to endanger the safety of victims, individuals or the public; or
 - e. That the accused person is likely to interfere with witnesses or evidence; or
 - f. That the accused person is likely to endanger national security; or
 - g. That it is in the public interest to detain the accused person in custody.

18. In this cause the following issues are not in dispute, that the accused and the deceased were living together as husband and wife and that they have two children between the who are potential prosecution witnesses and therefore this relationship must be taken into account by the court while considering the compelling reasons advanced by the prosecution to the effect that there will be interference with witnesses.

19. In support of this contention the prosecution relied on the Children Officers report produced in the lower court and it is not disputed that the accused stands in loco parent to the two minor witnesses and therefore the possibility of the accused interfering with them either directly or by influencing, compromising, inducing or terrifying them.

20. I have taken into account the close familial relationship between the accused and the two minor witnesses and I am satisfied that it is a compelling reason to enable me deny the accused the enjoyment of his constitutional right to bail at this stage. The accused shall be remanded in custody until the two witnesses have testified, then the same shall be at liberty to renew the application herein.

21. And it is ordered.

SIGNED DATED AND DELIVERED THIS 8TH DAY OF JULY 2025



J WAKIAGA

JUDGE

In the presence of

Court Assistant -Irene

Ms Ogwenyo for DPP

Ms. Orero holding brief for the victim's family

Mr. Awuoche for the accused.

